

Exhibit 5
(Redacted)
(Previously Filed Under Seal as Dkt. 510-3)

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF MINNESOTA

4 -----X
5 FAIR ISAAC CORPORATION,

6 PLAINTIFF,

7 -against-

8 Case No.:
9 16-cv-1054

10 FEDERAL INSURANCE COMPANY and
11 ACE AMERICAN INSURANCE COMPANY,

12 DEFENDANTS.
13 -----X

14 DATE: February 26, 2019

15 TIME: 10:06 A.M.

16 DEPOSITION of a Non-Party
17 Witness, LAWRENCE WACHS, taken by the
18 respective parties, pursuant to a
19 Subpoena and to the Federal Rules of
20 Civil Procedure, held at the offices of
21 Merchant & Gould, P.C., 767 3rd Avenue,
22 23rd Floor, New York, New York 10017,
23 before Jennifer Schwartz, a Notary
24 Public of the State of New York.

EXHIBIT

5

1
2 Waid said in his previous e-mail that
3 application description was missing,
4 I'm responding to Bill Waid's question
5 directly, trying to describe the
6 application requirement and how that
7 will be -- how our product will be used
8 in that division, and to the purpose of
9 getting a pricing decision from Bill
10 Waid.
11 Q. So in connection with describing
12 how the product would be used in the
13 division, you state the division's
14 revenue is 3.5 billion with 1,000
15 employees, correct, in the middle of
16 the first paragraph?
17 **A. Correct.**
18 Q. Specialty insurance, is that the
19 division you're talking about?
20 **A. That's correct.**
21 Q. Okay. "It's characterized by a
22 small number of high value policies
23 with high risk profile." And then do
24 you recall that Bill Waid approved that
25 pricing?

Page 72

1
2 **A. I don't have a recollection of**
3 **that.**
4 MS. JANUS: Do you know what
5 number we're on?
6 MR. HINDERAKER: Yes, but I
7 have to look it up. Give me one
8 minute and I -- actually -- the
9 last exhibit was 330, according
10 to my notes, so you'd be on 331.
11 MS. JANUS: Okay.
12 (Whereupon, e-mail was
13 marked as Defendants' Exhibit 331
14 for identification as of this
15 date by the Reporter.)
16 Q. Okay. Handing you a document
17 that's been marked as Exhibit 331, this
18 appears to be Bill Waid's response to
19 you on February 22nd, 2006, do you see
20 that?
21 **A. I do.**
22 Q. And he notes "approved, but in
23 the future I need more lead time,"
24 correct?
25 **A. Correct.**

Page 73

1
2 Q. So Bill Waid approved the
3 pricing you suggested for the
4 application you were discussing?
5 **A. Exactly.**
6 (Whereupon, e-mail was
7 marked as Defendants' Exhibit 332
8 for identification as of this
9 date by the Reporter.)
10 Q. Handing you what has been marked
11 as deposition Exhibit 332. This is an
12 e-mail from John Haines to Bill Waid,
13 subject, "pricing approval for Chubb
14 ELA," correct?
15 **A. Yes.**
16 Q. And "ELA" stands for what?
17 **A. Enterprise license agreement.**
18 Q. So in the April 2006 time
19 period, was FICO discussing the terms
20 of an ELA with Chubb?
21 **A. Correct.**
22 Q. And you were involved in those
23 discussions?
24 **A. I wasn't CCed on this e-mail,**
25 **carbon copied, so I don't know that I**

Page 74

1
2 saw this specifically but I was
3 involved in the conversations here.
4 Q. In the second paragraph of the
5 e-mail, John Haines says, "Chubb group
6 of insurance companies signed 12.3
7 billion in policies in 2005," correct?
8 **A. Correct.**
9 Q. Then he goes on "and based on
10 [REDACTED]
11 [REDACTED]
12 pricing in the attached," correct?
13 **A. Correct.**
14 Q. So he's using the revenue
15 information for the Chubb group of
16 insurance companies in pricing the ELA,
17 correct?
18 **A. It appears that way.**
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 **A. It's a request by John to have**
24 **variation pricing and it could be based**
25 **upon -- and I don't know the answer --**

Page 75

Fair Isaac Corporation vs. Federal Insurance Company, et al.

1
2 but the -- subjectively it would be
3 either because of the nature of the
4 business relationship with Chubb, the
5 time of year, his commission quota, or
6 whatever else that he's going to reduce
7 that [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Q. The attachment to the e-mail is
15 a three-page chart, and you can -- if
16 you take the clip off, you can actually
17 spread it out, it's a little easier to
18 read. So you see towards the top of
19 the page you're listed as the account
20 executive, correct?

21 **A. That's right.**

22 Q. And then Russ Schreiber,
23 consistent with your previous
24 testimony, is listed as the client
25 partner?

Page 76

1
2 **A. Correct.**
3 Q. And then Dale Zwizinski is the
4 person you've mentioned a couple of
5 times as the technical person involved?

6 **A. Correct.**

7 Q. It says, "Note, the following
8 enterprise license quotation is
9 included at this time for budgetary
10 purposes." Do you know what that
11 means?

12 **A. That it wasn't a final
13 quotation, it was just for estimation
14 purposes.**

15 Q. So this was an internal number
16 that was being generated for purposes
17 of FICO's budget?

18 **A. Well, no, because it was sent to
19 Jim -- James Black --**

20 Q. Okay.

21 **A. -- so I would tell him that he
22 was looking -- without specificity, he
23 was looking for a range of what this
24 enterprise license could look like,
25 what the dollars could be, and that's**

Page 77

1
2 what we did here. We used the typical
3 pricing model formula, what would be
4 included in the enterprise license, and
5 it was our -- it was our expectation
6 that this would beget a conversation to
7 fine tune the license points here, and
8 even at that point to negotiate a
9 higher or lower enterprise license
10 quotation based upon what they -- what
11 they really think they need and what
12 they would achieve.

13 Q. After that statement, it says,
14 "The final quotation is contingent upon
15 a number of factors, including," and
16 then it lists six bullet points?

17 **A. All of those -- was that the end
18 of your question?**

19 Q. Yes.

20 **A. All of those bullet points
21 relate to the value of the software,
22 that would be -- that they would
23 license.**

24 Q. The third bullet point is "rate
25 of technology adaption, e.g.

Page 78

1
2 20 applications within five years or in
3 20 years," do you see that?

4 **A. Yes.**

5 Q. And what is -- what does that
6 relate to?

7 **A. It could be the best product in
8 the world but if the business units
9 don't choose to adopt it and to fund
10 the development effort, then the value
11 for the client would be reduced because
12 the product is not being adopted at an
13 assumed rate.**

14 Q. So the rate of adoption may have
15 an impact on the final price?

16 **A. Sure.**

17 Q. Or projected rate of adoption?

18 **A. It's -- it's what we would use
19 to project its impact to the
20 organization and you can see in the
21 final paragraph there we wanted to
22 discover the answers to these questions
23 so that we can fine tune our enterprise
24 license quotation.**

25 Q. And Ash Winshah was someone at

Page 79

1 the Blaze software, is that a fair
2 statement?
3
4 **A. Yes. Again, as a master**
5 **services agreement, typically it's only**
6 **a vehicle that exists between the**
7 **organizations upon which specific work**
8 **orders are attached that describe the**
9 **work effort and the price for that work**
10 **effort, so the master services**
11 **agreement is something that Chubb**
12 **wanted to have executed -- I believe**
13 **even before the product license**
14 **agreement -- to make sure that we were**
15 **compatible.**
16 Q. What do you mean by that?
17 **A. Compatible meaning that we would**
18 **accept their terms for an MSA and that**
19 **we didn't have any untoward terms that**
20 **they couldn't live with.**
21 Q. This agreement was related to
22 the software license agreement?
23 **A. It would only be related to the**
24 **software license agreement in that it**
25 **would be that product, that license**

Page 84

1 product that we would be talking about
2 here.
3
4 Q. In the master services
5 agreement?
6 **A. That's right.**
7 Q. Sure. Okay. Take a look at the
8 master services agreement that's
9 attached to the e-mail -- and actually,
10 before I get there, you mentioned
11 additional agreements that would be
12 entered into relating to work that
13 would be performed by FICO, are those
14 referred to as statements of work or
15 SOWs?
16 **A. The statement of work would**
17 **drive the work order --**
18 Q. Okay.
19 **A. -- yes, and the pricing.**
20 Q. And -- so just describe to me
21 sort of what documents or agreements
22 are associated with all these things at
23 FICO?
24 **A. Once -- in order to bid and tell**
25 **the client how much it would cost to**

Page 85

1 build out the appropriate software, you
2 would have to sit with the client and
3 create a statement of -- a scope of
4 work which is the limits, and it
5 enables the professional services
6 organization to estimate with precision
7 the number of people hours that would
8 be required to build the application
9 suitable to purpose, and so there would
10 be an initial discovery session with
11 the client and that would be a
12 deliverable document, a discovery
13 document, and then that would drive a
14 statement of work and the pricing for
15 the statement of work, and those would
16 become attachments to the master
17 service agreement.
18 Q. And then is there a separate
19 work order?
20 **A. I don't know the mechanics in**
21 **this particular case, typically there**
22 **would be a work order as an exhibit to**
23 **every -- addendum to each of the -- to**
24 **the master services agreement.**
25

Page 86

1 Q. Okay. All right. So in the
2 e-mail marked as 305, Ms. Boone says
3 she's attaching the updated version of
4 the master services agreement and the
5 standard Blaze software license and
6 maintenance agreement.
7 **A. Yes.**
8 Q. Do you see that in her e-mail?
9 **A. Yes.**
10 Q. Okay. And then if you look at
11 the master services agreement, which is
12 the first document she attaches, on the
13 first page, under the heading
14 "definitions" --
15 **A. Yes.**
16 Q. -- do you see that Chubb is
17 defined as "Chubb & Son, a division of
18 federal insurance company for itself
19 and as servicer for the Chubb
20 corporations and its noninsurance
21 company subsidiaries or as manager of
22 its insurance company subsidiaries," do
23 you see that?
24 **A. Yes, I do.**
25

Page 87

Fair Isaac Corporation vs. Federal Insurance Company, et al.

1
2 Q. And did you place any
3 significance on that definition of
4 Chubb in the master services agreement?
5 **A. I did not place any significance**
6 **on it, I assumed that was the requested**
7 **definition for the client.**
8 Q. From your perspective, you were
9 entering into a license -- FICO was
10 entering into a license agreement with
11 the Chubb group of entities, is that a
12 fair statement?
13 MR. HINDERAKER: Objection,
14 misstates the testimony.
15 **A. I believe that the client**
16 **definition as contained in this**
17 **paragraph was what we were entering**
18 **into. Again, typically -- again, our**
19 **pricing model is based upon the scope,**
20 **which is based upon the -- which drives**
21 **the pricing model. I would not**
22 **typically get it -- it would not**
23 **interest me what the client's requested**
24 **legal definition of their company, the**
25 **contracting party, other than the**

Page 88

1 pricing which we talked about.
2 Q. The second document attached to
3 the e-mail marked as Exhibit 305 is
4 what Ms. Boone referred to as FICO's
5 standard Blaze software license and
6 maintenance agreement, do you see that?
7 **A. Yes.**
8 Q. Okay. And this document in the
9 first paragraph states that it's
10 between Fair Isaac Corporation and
11 Chubb & Son, a division of Federal
12 Insurance Company?
13 **A. Yes.**
14 Q. Did you understand that the same
15 entity was entering into both the
16 software license and maintenance
17 agreement and the master services
18 agreement?
19 **A. I would have no reason to think**
20 **anything but that.**
21 Q. And, again, that precise entity
22 was not significant to you?
23 **A. Not at all.**
24 Q. Take a look at paragraph 2.1 of
25

Page 89

1 the standard software license and
2 maintenance agreement.
3 **A. Yes.**
4 Q. The title of that paragraph is
5 license grant to Fair Isaac products?
6 **A. Yes.**
7 Q. And starting in the second line
8 it states, "Fair Isaac hereby grants to
9 client a nonexclusive,
10 non-transferrable, limited license to
11 use the Fair Isaac products during the
12 term for its internal business
13 purposes, but only within the
14 territory, and subject to the
15 additional limitations set forth below,
16 et cetera."
17 **A. Correct.**
18 Q. And based on your experience at
19 FICO, is the phrase "but only within
20 the territory" commonly in the license
21 grant paragraph of license agreements
22 for Blaze?
23 **MR. HINDERAKER: A couple of**
24 **objections. One, lack of**
25

Page 90

1 foundation; two, to the extent it
2 asked for a legal conclusion
3 outside of the expertise or
4 knowledge of Mr. Wachs.
5 Q. Go ahead.
6 **A. Notwithstanding the objection,**
7 **I would always expect to have a**
8 **territory definition within a license**
9 **agreement.**
10 Q. And you would expect to have
11 that referenced to the territory in the
12 license grant section as it is in this
13 standard form?
14 **MR. HINDERAKER: Same**
15 **objections.**
16 **A. Yes.**
17 Q. Paragraph 10.8 of the standard
18 form license agreement relates to -- or
19 is titled "no assignment", do you see
20 that?
21 **A. I do.**
22 Q. Are you familiar with that
23 paragraph in the standard FICO license
24 agreement?
25

Page 91

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1</p> <p>2 A. I am not specifically familiar</p> <p>3 with it but it is typical that a</p> <p>4 no-assignment clause would be contained</p> <p>5 within a software licensing agreement.</p> <p>6 Q. Did you have any role in</p> <p>7 negotiating the no assignment paragraph</p> <p>8 in the Chubb-FICO license agreement?</p> <p>9 A. No. No role.</p> <p>10 Q. Have you ever been called upon</p> <p>11 to interpret the Chubb-FICO</p> <p>12 no-assignment provision in the license</p> <p>13 agreement?</p> <p>14 A. No.</p> <p>15 Q. As you sit here today, unless I</p> <p>16 asked you to read that paragraph in the</p> <p>17 final agreement, do you have any idea</p> <p>18 what the parties agreed to?</p> <p>19 A. No, I don't.</p> <p>20 Q. In connection with the no</p> <p>21 assignment paragraph?</p> <p>22 A. No.</p> <p>23 Q. During your time at FICO, did</p> <p>24 you have occasion to deal with clients</p> <p>25 who merged with other entities and</p> <p style="text-align: right;">Page 92</p> | <p>1</p> <p>2 Q. She says, "Attached is the final</p> <p>3 version of the MSA," does that mean</p> <p>4 that you would have signed off on this</p> <p>5 version of the MSA prior to her sending</p> <p>6 it?</p> <p>7 A. It's not a formal sign off but</p> <p>8 yes, I was aware of the progress and</p> <p>9 that this was going out, certainly.</p> <p>10 Q. I'm handing you what's been</p> <p>11 marked as deposition exhibit -- oh, no,</p> <p>12 actually, can I have that back? Sorry,</p> <p>13 you can keep yours. I'm handing you</p> <p>14 what's been marked as a -- a document</p> <p>15 that was previously marked as</p> <p>16 deposition Exhibit 108. This is an</p> <p>17 e-mail from John Haines to Bill Waid</p> <p>18 with a copy to you and the subject is</p> <p>19 "Chubb question", correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Is this one of the documents you</p> <p>22 reviewed in connection with your</p> <p>23 deposition preparation?</p> <p>24 A. I believe so.</p> <p>25 Q. It's dated June 16th, 2006, so</p> <p style="text-align: right;">Page 94</p> |
| <p>1</p> <p>2 engaged with FICO relating to what that</p> <p>3 merger meant in the context of their</p> <p>4 license agreement?</p> <p>5 A. Not during my tenure at FICO.</p> <p>6 Q. Do you have any understanding,</p> <p>7 based on your time at FICO, as to how</p> <p>8 FICO deals with those types of</p> <p>9 situations?</p> <p>10 A. Not at all.</p> <p>11 Q. Showing you what has been marked</p> <p>12 as deposition Exhibit 308. This is an</p> <p>13 e-mail from Jandeen Boone to Jim Black</p> <p>14 and there's a copy to you and others at</p> <p>15 FICO, correct?</p> <p>16 A. Correct.</p> <p>17 Q. So is Ms. Boone keeping you in</p> <p>18 the loop, so to speak, on the contract</p> <p>19 progression with Chubb?</p> <p>20 A. Yes.</p> <p>21 Q. And that's because you were the</p> <p>22 point person from a business</p> <p>23 perspective on the Chubb account at</p> <p>24 this time?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 93</p> | <p>1</p> <p>2 it's around the time that the parties</p> <p>3 have been negotiating the master</p> <p>4 services agreement and the standard</p> <p>5 form license was provided to Chubb at</p> <p>6 this time, correct?</p> <p>7 A. Right -- yes.</p> <p>8 Q. And John Haines says, "Bill,</p> <p>9 Chubb is inquiring again about an</p> <p>10 enterprise price but they want to know</p> <p>11 if this would include international. I</p> <p>12 have attached the quote for your review</p> <p>13 but I think that if they wanted to do</p> <p>14 an ELA, then for this price we could</p> <p>15 grant them global rights. They may</p> <p>16 need more Dev seats beyond the ten, so</p> <p>17 maybe we bump it up to a 30-pack." Did</p> <p>18 I read that correctly?</p> <p>19 A. You did.</p> <p>20 Q. Do you recall at this time that</p> <p>21 Chubb was asking about the enterprise</p> <p>22 price and whether it would include</p> <p>23 international?</p> <p>24 A. Yes.</p> <p>25 Q. Is this the conversation that</p> <p style="text-align: right;">Page 95</p> |